

National Lawyers Guild

20160436

FILED

IN THE OFFICE OF THE

CLERK OF SUPREME COURT

DECEMBER 26, 2016

STATE OF NORTH DAKOTA

"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people, to the end that human rights shall be regarded as more sacred than property interests." Preamble to the NLG Constitution

December 26, 2016

Ms. Penny Miller, Clerk
North Dakota Supreme Court
600 E. Boulevard Ave.
Bismarck, ND 58505-0530
supclerkofcourt@ndcourts.gov

Re: Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota Supreme Court No. 20160436

Dear Ms. Miller:

The National Lawyers Guild (NLG) was founded in 1937 as an association of progressive lawyers and jurists who believed that they had a major role to play in the reconstruction of legal values to emphasize human rights over property rights.

The NLG is the oldest and most extensive network of public interest and human rights activists working within the legal system. Since 1968 the NLG Mass Defense Committee has provided legal representation, usually at no cost, to people exercising their First Amendment rights to free speech and assembly.

The NLG has a long-standing commitment to progressive social change and, in particular, to the defense of individuals and groups charged with crimes for having been engaged in demonstrative activities in support thereof. In the 1960's NLG lawyers traveled to the South and set up offices to defend persons charged with crimes for being part of the Civil Rights Movement. Later in that decade the NLG represented individuals and groups protesting the United States' involvement in the Vietnam War.

The NLG's work of this ilk continues to this date, for example, in defense of persons involved in and/or supporting the cause of the Black Lives Matter movement. The NLG has had and continues to have a special relationship throughout the world with those seeking to protect the environment and those endeavoring to respect the rights of indigenous peoples. The NLG also has a close relationship with the International Association of Democratic Lawyers, working to protect rights guaranteed to all peoples under the United National Charter of Human Rights.

We urge the North Dakota Supreme Court to allow the Petition pending before the Court to permit qualified attorneys admitted in other jurisdictions to practice temporarily in North Dakota in order to protect the constitutional, international and civil rights rights of those arrested in connection with their opposition to the Dakota Access Pipeline ("DAPL"). To this end, we support the [Petition to Permit Temporary Provision of Legal Services](#) filed on December 14, 2016, by attorneys licensed in North Dakota.

We understand from this Petition that over 550 arrests have been made, primarily in Morton County, since mid-August 2016; that as of December 2 some 264 defendants remained unrepresented; and

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that the number of arrestees may continue to grow. As these cases rapidly move to trial, it is evident that the number of criminal defense attorneys licensed in North Dakota and available to represent these defendants is inadequate, and that this problem cannot be rectified by the existing rules governing *pro hac vice* representation or reciprocity-based admission.

We are concerned that under these circumstances the rights guaranteed the defendants by the state and federal constitutions and statutes, and international law cannot be upheld. Specifically, the right of both indigent and non-indigent defendants to adequate and effective counsel undergirds the guarantees of a fair and speedy trial, due process and equal protection that constitute the cornerstones of the rule of law. Timely intervention by this Court could protect these foundational principles and preclude the time and expense of years of subsequent litigation should these defendants be denied their constitutional rights.

For these reasons we support the above referenced Petition and ask that the Court find that there currently exists an emergency affecting the legal system of North Dakota that warrants the adoption of a Temporary Rule to Admission to Practice in North Dakota; amend the rules of admission to allow a lawyer authorized to practice law in another United States jurisdiction to provide legal services in North Dakota on a temporary basis for the duration of the judicial emergency; grant blanket permission for out of state lawyers to appear in all criminal matters before courts of North Dakota to provide legal services under this Temporary Rule; and authorize lawyers practicing under this rule to pay the same admission fee as required for lawyers who have been licensed in North Dakota for five years or more.

In addition, should the above Petition be granted, the NLG would be willing to appeal, to both our membership and our vast network of experienced criminal defense and mass defense lawyers, to apply for admission under the Temporary Rules and accept criminal cases related to the DAPL protests. Many of these lawyers accept such cases *pro bono*, as part of their principled commitment to the Constitutional right to counsel, and their commitment to easing the legal emergency if declared by the Court.

We urge you to ensure that all persons arrested and charged in North Dakota have access to adequate and effective legal representation.

Natasha Bannan
President, National Lawyers Guild

Pooja Gehi
Executive Director, National Lawyers Guild

King Downing,
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